



August 8, 2000

Ms. Janice Marie Wilson
Associate General Counsel
Texas Department of Transportation
P.O. Box 2293
Austin, Texas 78768

OR2000-2995

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138143.

The Department of Transportation (the "department") received a request for two items: 1) Form 1989, the KSA Screening Instrument for JVN # 0-10-K540-788, the application scores, and possible points and 2) Form 1990, the Interview Questions for JVN # 0-10-K540-788 with the requestor's answers, scores, preferred answers, and possible points. You state the department will release most of the requested interview questions and answers that focus primarily on the applicant's experience or past actions. You state that your inquiry to this office only involves questions 3, 4, 7, 10, and 11 of Form 1990.¹ You claim that these specific questions and their respective answers are excepted from disclosure under section 552.122(b) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within section 552.122 must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations.

¹ As your request only focuses on the specifically noted questions and answers, we assume that you have released the rest of the requested information.

Id. at 4-5; *see also* Open Records Decision No. 118 (1976). We have reviewed the records at issue and have concluded that the specified interview questions test an individual's or group's knowledge or ability in a particular area. Because the answers tend to reveal the questions, the department may withhold questions 3, 4, 7, 10, and 11, their respective recommended answers, and their respective actual answers under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994) (when answers to test questions might reveal the questions themselves, the information may be withheld under section 552.122); Attorney General Opinion JM-640 at 3 (1987).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

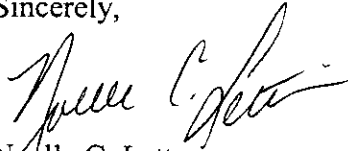
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Noelle C. Letteri', written over the typed name.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 138143

Encl. Submitted documents

cc: Mr. Robert Eugene Bateman
17750 Fisherman Drive
Troup, Texas 75789
(w/o enclosures)